

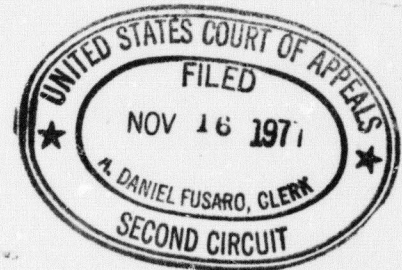
***United States Court of Appeals
for the Second Circuit***



APPENDIX

77-6147

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT



----- x
ALFRED A. CURCI,

Appellant,

- against -

THE UNITED STATES OF AMERICA,
THE JUDGE ADVOCATE GENERAL OF THE
ARMY, and THE SECRETARY OF THE
ARMY,

Appellees.
----- x

ON APPEAL FROM AN ORDER OF THE UNITED STATES
DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK
SUMMARILY DISMISSING THE COMPLAINT (Docket No.
76 Civ. 794) (MISHLER, C.J.)

APPENDIX

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PAGINATION AS IN ORIGINAL COPY

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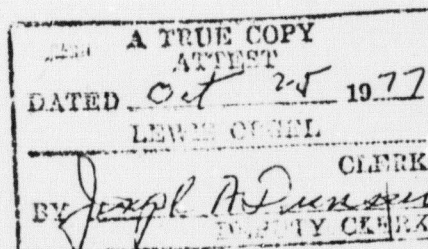
*Irrelevant and redundant documents prepared before or after
but not during the Trial have been omitted.

76C

794

CURCI -VS- USA et al

DATE	NR.	PROCEEDINGS
4-30-76		Complaint filed/ Summons issued. (1)
5-5-76		Summons ret. and filed/ executed. (2)
7-7-76		Stip. extending time to answer complaint to 8-30-76 filed. (3)
25-76		ANSWER filed. (4)
30-76		Notice of motion (plntff's) for summary judgment etc. filed. (5)
2/17/76		Before Mishler, Ch.J--motion for summary judgement--motion submitted decision reserved
2-22-76		2-22-76 Affidavit of Frederic J. Gross filed. mg (6)
26-77		Memo of law in opposition to plttf's brief in support of summary judgment filed. mg (7)
16-77		Before MISHLER CH. J.--Case called. Plttf's motion for summary judgment argued. Decision reserved. Plttf to submit brief by 7-1-77. 1d
6-17-77		Affidavit of mailing of Peggy B. Floyd for service of memorandum of law filed. t k (8)
120/77		Deit's post argument reply memo filed. mg (9)
12-77		By MISHLER, CH. J. - Memorandum of Decision and Order dtd 7-29-77 directing Clerk to enter judgment dismissing the complaint filed. (10)mm
8-1-77		JUDGMENT OF DISMISSAL dtd 8-1-77 filed. (p/c mailed to attys). mm (11)
8-1-77	156	
26/77		Notice of appeal filed, with bond attached. Docket entries and duplicate of Notice of Appeal mailed to the C of A. tk (12)
120/77		Scheduling order received from the Cof A setting date for record on appeal. (13)



[1a]

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

76C 794

-----X
ALFRED A. CURCI,

Plaintiff,

CIVIL ACTION NO.

-vs.-

UNITED STATES OF AMERICA,
THE JUDGE ADVOCATE GENERAL
OF THE ARMY,
THE SECRETARY OF THE ARMY,
Defendants.

COMPLAINT

-----X
TO THE HONORABLE, THE JUDGES OF THE UNITED STATES DISTRICT
COURT FOR THE EASTERN DISTRICT OF NEW YORK:

Alfred A. Curci, by the undersigned attorney, complaining
of the defendants' conduct, asserts:

A. INTRODUCTORY STATEMENT

1. This is a two-count complaint. Count One at bottom seeks a judicial determination that Article 69, U.C.M.J., 10 U.S.C. §869, creates a direct judicial appeal as of right, rather than a clemency mechanism, with respect to court-martial convictions not subject to mandatory appeal to the courts of military review (and their predecessors, the boards of review). Should plaintiff prevail on Count One, he seeks appropriate equitable relief, designed to compel processing of his Article 69 appeal with due regard for constitutional and statutory protections, as construed by the Supreme Court and the Court of Military Appeals.

Count Two challenges the validity of plaintiff's court-martial conviction. Should plaintiff be denied relief on Count One, or should the Judge Advocate General again deny relief after reprocessing plaintiff's Article 69 appeal in conformity with this Court's instructions, plaintiff will have exhausted and re-exhausted every available military remedy, and the merits of his challenge to the court-martial conviction will be ripe for

[2a]

civilian judicial review.

B. JURISDICTION

2. This Court's jurisdiction as to Count One is conferred by 28 U.S.C. §1361. This Court's jurisdiction as to Count Two is conferred by 5 U.S.C. §§701 et seq., and 28 U.S.C. §§1346, 1361, and 2241.

3. Count One arises under the Due Process clause of the fifth amendment and under 10 U.S.C. §869. Count Two arises under the Due Process and Self-Incrimination clauses of the fifth amendment and the Assistance of Counsel and Compulsory Process clauses of the sixth amendment.

C. PARTIES

4. Plaintiff Alfred A. Curci is a citizen of the United States who resides at 1571 Forty-sixth Street, Brooklyn, New York. His Army serial number is 42 259 907.

5. Defendant United States of America is sued solely with respect to plaintiff's claim under Count Two to recoup forfeitures withheld pursuant to the sentence of a court-martial. Said forfeitures are less than \$10,000 in value.

6. Defendant the Judge Advocate General of the Army is sued in his official capacity, solely with respect to plaintiff's claim under Count One as to his failure to perform the duties mandated by 10 U.S.C. §869. This defendant's official residence is The Pentagon, Washington, DC.

7. Defendant Secretary of the Army is sued solely in his official capacity as general supervisor of all Army activities. In that capacity, he supervises the maintenance and dissemination of plaintiff's official Army records, and, for purposes of habeas corpus jurisdiction, constitutes plaintiff's official custodian.

[3a]

This defendant's official residence is The Pentagon, Washington, DC.

D. FACTS

8. On or about October 25, 1945, plaintiff, then twenty years old, was inducted into the United States Army.

9. This induction was accomplished notwithstanding plaintiff's affliction with an extremely painful medical condition of the right testicle. That condition should have resulted in plaintiff's disqualification for induction and reclassification in Class IV-F by his local draft board.

10. Plaintiff's medical disability became aggravated during his Army service, thereby impairing his military effectiveness.

11. Upon being apprised of the matter, plaintiff's commanding officer informed him that he must undergo corrective surgery.

12. Plaintiff understood his commanding officer to be ordering him to undergo surgery, and plaintiff did not know that any such order would be ultra vires and unenforceable.

13. Fearing subjection involuntarily to surgery, plaintiff, on or about December 24, 1946, absented himself from his unit at Fort Dix without specific authority.

14. On or about October 14, 1947, plaintiff, at the urging of his family, voluntarily returned to Fort Dix.

15. On or about October 24, 1947, in the post hospital at Fort Dix, plaintiff underwent a surgical procedure designed to alleviate or correct his testicular disorder.

16. Plaintiff's painful condition persisted notwithstanding the aforesaid surgical intervention.

17. On or about February 6, 1948, plaintiff was tried by a general court-martial convened at Fort Dix, on charges growing out of his unauthorized absence.

18. At his trial, plaintiff was "defended" by a non-lawyer who had been assigned as his counsel by the convening authority.

19. This non-lawyer counsel perceived his role as that of an amicus curiae, rather than that of an advocate, as evidenced by the following errors of omission and commission:

- A. When the prosecution was unable to locate the military records upon which its case-in-chief relied, counsel stipulated to the existence of those facts essential to a finding of guilt.
- B. Thereafter, and without advising plaintiff of his right not to incriminate himself, counsel prevailed upon plaintiff to testify under oath on his own behalf.
- C. Rather than perjure himself, plaintiff testified truthfully, thereby judicially confessing the elements of the prosecution's case and reinforcing the prejudicial effect of counsel's improvident stipulation of facts.
- D. Plaintiff's testimony also touched upon the physical and mental troubles he had experienced. The substance of this testimony was more than sufficient to put in issue plaintiff's sanity, but counsel was apparently oblivious to the existence of the sanity defense.
- E. Plaintiff desired to present the testimony of three witnesses who were willing and able to appear at the trial. Counsel chose to present their testimony by stipulation.
- F. Although fully cognizant of the circumstances under which plaintiff absented himself from his unit, counsel did not raise the defense of duress.
- G. Beyond permitting plaintiff to plead not guilty at his arraignment, counsel made no pleas or motions on plaintiff's behalf.

[5a.]

20. Plaintiff was convicted at his trial by general court-martial, and served a sentence, as ultimately modified, approved, and ordered into execution, of six months confinement at hard labor, forfeiture of all pay and allowances "due or to become due" during the period of confinement, and dishonorable discharge.

21. Applications to the United States Army Board for Correction of Military Records for relief from the judgment of the court-martial were duly perfected, and thereafter denied without a hearing, in 1953, 1965, and 1971.

22. An application for relief from the judgment of the court-martial was duly perfected pursuant to Article 69, U.C.M.J., 10 U.S.C. §869. On or about July 22, 1975, the Chief, Examination and New Trials Division, Office of the Judge Advocate General, purporting to act on behalf of the Judge Advocate General, denied said application without reference to the authorities advanced by plaintiff, and without allusion to any contrary authorities. The reference number for this Article 69 appeal is JAAJ-ED GCM 1975/3245.

E. CAUSES OF ACTION

COUNT ONE:

23. The application for relief described above (¶22; hereinafter, "Art. 69 appeal") was treated more as a prayer for clemency than as an appeal from a conviction addressed to a judicial tribunal, as evidenced by the following:

- A. No reference to the adequacy of counsel's representation was made by the decisionmaker, although the case is clearly governed by United States v. Evans, 18 USCMA 3, 4 (1968) and Snapiro v. U.S., 69 F.Supp. 205 (Ct.Cl. 1947).
- B. No mention is made of the voluntariness of plaintiff's testimony, although the stipulation described above in ¶19A was deemed harmless by the decisionmaker on the

[6a]

basis of plaintiff's testimony. The decisionmaker ignored the absence of a knowing and intelligent waiver of plaintiff's constitutional protection against self-incrimination, as established by In re. Gault, 387 U.S. 1 (1967); Johnson v. Zerbst, 304 U.S. 458 (1938); and their progeny.

- C. The court-martial was under an independent affirmative duty to inquire into plaintiff's sanity, set out in ¶63 of the then-controlling Manual for Courts-Martial; failure to resolve the issue of sanity within a military forum constitutes a denial of due process of law as expounded in Whelchel v. McDonald, 340 U.S. 122, 124 (1950). The decisionmaker in the Article 69 appeal made no findings as to sanity.
- D. The decisionmaker in the Article 69 proceeding failed to inquire into the jurisdiction of the court-martial over plaintiff. Under controlling precedents of the Court of Military Appeals, especially United States v. Burden, 23 USCMA 510 (1975), plaintiff's induction was void ab initio -- and each military tribunal, including the Article 69 decisionmaker, has an affirmative duty to scrutinize trial records for jurisdictional defects, Del Prado v. United States, 23 USCMA 132 (1974).
- E. Plaintiff's inability to obtain compulsory process for defense witnesses remained prejudicial error after the improvident stipulation to their expected testimony, as has been established in United States v. Sweeney, 14 USCMA 599, 603 (1964).
- F. Forfeitures of accrued pay were exacted in violation of Bell v. United States, 366 U.S. 393 (1961).

24. The travesty perpetrated by the Article 69 decisionmaker abridged plaintiff's right to a judicial appeal created by 10

[7a]

U.S.C. §869 and secured by the Due Process clause of the fifth amendment to the Constitution.

COUNT TWO:

25. Plaintiff's trial by court-martial was attended by jurisdictional and constitutional errors, including:

- A. Want of jurisdiction over the person of the accused by reason of erroneous induction;
- B. Denial of effective assistance of counsel;
- C. Infringement of privilege against self-incrimination;
- D. Right to compulsory process for favorable witnesses;
- F. Denial of due process of law, encompassing the previously enumerated errors as well as denial of a hearing on sanity and absence of any competent evidence of guilt.

26. By reason of these errors, the judgment and sentence of the court-martial are void, the records of same maintained and disseminated by the defendants are prejudicially erroneous, and the restraints imposed upon plaintiff by his dishonorable discharge are unlawful.

F. PRIOR PROCEEDINGS

27. On or about March 15, 1976, plaintiff filed a petition in the United States Court of Claims, entitled ALFRED A. CURCI vs. THE UNITED STATES OF AMERICA, Docket No. 116-76, alleging substantially the same underlying facts.

28. On April 9, 1976, a notice of dismissal of said petition without prejudice, pursuant to Rule 102(a)(1)(i) of the Court of Claims, was forwarded to the clerk of the Court of Claims. This notice has substantially the same significance as a notice filed pursuant to Federal Rule of Civil Procedure 41(a)(1)(i).

[8a]

29. No prior application to an Article III court, other than the one described above in ¶27, has been made for any of the relief contemplated herein.

WHEREFORE, plaintiff prays for the following relief:

On Count One:

- A. A declaratory judgment, pursuant to 28 U.S.C. §2201, to the effect that the proceedings described by 10 U.S.C. §869 constitute a direct appeal from a judgment of conviction and sentence; that such proceedings are governed by the Constitution and the Uniform Code of Military Justice, and by the precedential authorities which govern appeals under 10 U.S.C. §§866, 867; and that the decision-maker in plaintiff's Article 69 appeal erroneously failed to apply controlling authorities or to offer a reasoned basis for not applying them.
- B. An order, directed to defendant, The Judge Advocate General of the Army, directing him, his successors in office, and his and their subordinates in command, to promulgate and observe regulations for the processing of Article 69 appeals which are consistent with, and in furtherance of, the above declaratory judgment.
- C. An order, directed to defendant, The Judge Advocate General of the Army, directing him to process an plaintiff's Article 69 appeal, in a manner consistent with the above declaratory judgment.

On Count Two:

- D. A declaratory judgment to the effect that the constitutional and/or jurisdictional errors attending

[9a]

plaintiff's trial by general court-martial rendered the resulting judgment of conviction and sentence null and void.

- E. An order, directing defendant The Secretary of the Army to expunge from all records within his control each and every reference to the fact of plaintiff's conviction by general court-martial; to substitute an honorable discharge for the dishonorable discharge awarded pursuant to the sentence of said general court-martial; and to notify all offices and agencies of the federal government which might be expected to maintain records pertaining to plaintiff's trial by general court-martial that the resulting conviction and sentence are null and void.
- F. An order, directed to the United States of America, requiring it to provide an accounting of the forfeitures exacted pursuant to the sentence awarded by plaintiff's general court-martial, and to pay plaintiff a sum equal to said forfeitures, together with such costs and interest as the law permits.
- G. Such other and further relief as law and justice require.

Frederic A. Johnson
FREDERIC A. JOHNSON
258 Broadway
New York, NY 10007

964-2581

Attorney for Plaintiff

Of counsel:
FREDRIC J. GROSS,
Law Student

[10a]

CIS:LFT:gp
F. 760636

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- X
ALFRED A. CURCI;

Plaintiff,

Civil Action
No. 76 C 794

-against-

ANSWER

UNITED STATES OF AMERICA, THE JUDGE
ADVOCATE GENERAL OF THE ARMY, THE
SECRETARY OF THE ARMY,

Defendants.
----- X

FIRST DEFENSE

1. The complaint fails to state a claim against
defendants upon which relief can be granted.

SECOND DEFENSE

2. The Court lacks subject matter jurisdiction.

THIRD DEFENSE

3. This action is barred by sovereign immunity.

FOURTH DEFENSE

4. This action is barred by the statute of limitations, 28 U.S.C. §2401.

FIFTH DEFENSE

5. This action is barred by laches.

6. Defendants admit the allegations contained in
paragraphs 5, 6, 7, 17, 18, 20, 21, 22, 27 and 28.

7. Defendants allege that they are without
knowledge or information sufficient to form a belief as
to the truth of the allegations contained in paragraphs
4, 8, 9, 10, 11, 12, 13 (except admit that plaintiff
absented himself from his unit on December 24, 1946),
14 (except admit that plaintiff returned from AWOL on
October 24, 1947), 15, 16, and 29.

[11a]

8. Defendants deny the allegations contained in paragraphs 2, 3, 19, 23, 24, 25 and 26.

WHEREFORE, the defendants respectfully request that the complaint be dismissed.

Dated: Brooklyn, New York
August 25, 1976

DAVID G. TRAGER
United States Attorney
Attorney for Defendants

By: 51

LEWIS F. TESSER
Assistant U. S. Attorney

TO:

Frederick A. Johnson, Esq.
258 Broadway
New York, N.Y. 10007

Plaintiff complains, in this action for damages, declaratory and injunctive relief, that his general court martial was constitutionally defective, and that subsequent administrative review was meaningless. Curci, maintaining that congressional intent is clear, seeks summary judgment ^{/1} of his claim that Article 69 of the Uniform Code of Military Justice ("U.C.M.J."), 10 U.S.C. §869, "creates a direct right of judicial appeal, rather than a clemency mechanism," and as such, he is entitled to reconsideration of his petition for review. Alternatively, plaintiff seeks "habeas corpus relief" from his 30 year old military conviction for absence without leave.

The facts, petrified by time, are not in dispute. Curci was drafted into the United States Army on October 26, 1945, despite a previous medical rejection and a continued physical disorder. He was never able to adjust to military life, however, Curci's early career was marked by persistent unauthorized absences and constant complaints of nervousness and pain. His transgressions at first went unpunished, and his nervous habits were held to be symptomatic of immaturity. Plaintiff was found, however, to suffer from an accumulation of fluid in the genital region. Corrective surgery being appropriate, Curci was ordered to submit to the medical procedure or face court martial proceedings.

/1 Plaintiff has exhausted his administrative remedies Smith v. Secretary of the Navy, 392 F.Supp. 428, 433-34, (W.D.Mo.) aff'd 506 F.2d 1280 (8th Cir.1974)

Fearing both, Curci fled on December 24, 1946, and returned to his family. He took on no work, but remained at home with his sickly mother tending to her daily needs. As her condition worsened, however, Curci thought of returning since his unauthorized absence was but an added tension. Finally, at his family's urging, plaintiff voluntarily surrendered to military authorities at Fort Dix on October 14, 1947.

Charged with desertion, Curci was immediately turned over to psychiatrists for evaluation. His condition was diagnosed as a mild immaturity reaction, the doctors finding him fit to stand trial. Curci, thereafter, underwent corrective surgery, and was permitted several weeks for recuperation.

On February 6, 1948, a general court martial was convened to try Curci for desertion. Plaintiff was represented by a non-lawyer who was admitted to the military bar. The prosecution opened and attempted to prove Curci's wilful absence by morning report extracts. While they were able to produce the October 14, 1947 summary marking plaintiff's return, they did not, at the commencement of trial, possess the December 24, 1946 report indicating Curci's flight. Defense

[14a]

counsel, however, stipulated to the fact that plaintiff first absented himself on that December date. Curci then took the stand in his own defense after the panel informed him of his right to remain silent. Plaintiff claimed that he remained absent for an extended period of time because he feared both the operation and the consequences if he failed to submit to the procedure. He disclaimed any intention to desert, but maintained that he planned to return when he overcame his fear. The ailing condition of his mother, plaintiff admitted, played only a small part in his decision to flee. Curci's testimony complete, counsel then stipulated to the corroborative testimony that three defense witnesses intended to give.

The panel found Curci guilty of desertion and sentenced him to 1-1/2 years at hard labor, forfeiting all pay and allowances and directing that he be dishonorably discharged. The Judge Advocate General, finding upon review that Curci lacked the requisite intent to desert, reduced the conviction to absence without leave and modified the prison term imposed. Curci thereafter, perfected successive applications to the United States Army Board for the Correction of Records in the years 1953, 1965 and 1971. The Board, in rejecting his first application, found no basis for a

[15a]

reasonable doubt as to guilt, nor any indication of probable error or injustice in the trial or sentence. Later, the Board found no new evidence of error and rejected his subsequent applications, indicating in 1971 that under the recently amended provisions of Article 69, U.C.M.J., 10 U.S.C. §869, Curci did have the right to petition the Judge Advocate General for a review of his original conviction.

In 1975, Curci perfected such an application alleging that he was denied effective assistance of counsel. Curci, pointing out that he was represented by a lay person, maintained that counsel "foolishly" stipulated to the elements of the charges, "improperly" advised him to take the stand, and failed to raise the "viable" defenses of duress and insanity. The Judge Advocate General, after carefully reviewing plaintiff's claim, found in a brief one page letter that the representation was not prejudicially inadequate. Accordingly, Curci was denied relief.

Plaintiff now complains that his Article 69 petition "was treated more as a prayer for clemency than as an appeal from a conviction addressed to a judicial tribunal". (Complaint ¶23). The Judge Advocate General's opinion was brief; he did not write on several of Curci's claims. The

[16a]

short shrift treatment afforded the petition, plaintiff argues, abridged his "right to a judicial appeal created by 10 U.S.C. §869 and secured by the Due Process Clause" (Complaint ¶24).^{/2}

The rights afforded military defendants, like their civilian counterparts, do not necessarily terminate when a court martial conviction becomes final. Article 69 of the U.C.M.J., 10 U.S.C. §869, amended most recently in 1968, permits the Judge Advocate General to vacate or modify any findings or sentence on the ground of fraud, newly discovered evidence, lack of jurisdiction, or prejudicial error in any court martial which, although reviewed, has not been considered by a Court of Military Review. Congress by enacting this provision, intended to expand existing review procedures and provide a means for quasi-appellate relief to those whose cases would otherwise be reviewed only in the field. Moyer, Justice and the Military §2-766 at 619. For the jurisdiction of the Courts of Military Review is limited; only enlisted personnel who are sentenced to death, or

^{/2} Jurisdiction is premised under 28 U.S.C. §1361.

[17a]

more than one year confinement, and those meted dishonorable or bad conduct discharges possess a statutory right of appeal. ^{/3} Article 66(b) U.C.M.J., 10 U.S.C. §866(b). In bestowing additional review powers on the Judge Advocate General, Congress explained that:

[i]t has been the experience of all services . . . particularly with respect to . . . those special and general court martial cases not reviewable by a board of review, [now Court of Military Review] that some provision should be made for removing the fact of conviction, as well as granting other relief, in appropriate cases. 1968 U.S. Code Cong. & Admin. News 4501, 4515.

As implemented, relief under the amended version of Article 69 is clearly not to be regarded as part of the appellate review process. 1969 Manual for Courts-Martial, Para. 110A; see also DA Pam 27-2, Analysis of Contents, Manual for Courts-Martial, 1969 (Rev.) 21-2 (July 25, 1970). It is more a collateral proceeding akin to coram nobis. The relief that may be afforded is both extraordinary and discretionary in

/3 Although the sentence imposed on Curci included a dishonorable discharge, he was not entitled to directly appeal to a Board of Review (now Court of Military Review) since execution of that portion was stayed pending his release from confinement. See Article 50-1/2, Articles of War.

[18a]

nature. DA Pam 27-2, Analysis of Contents, Manual for Courts Martial, supra at 21-1-2. Nevertheless, legal principles control. See McPhail v. United States _____ U.S.C.M.A. _____, _____ C.M.R. _____ (August 27, 1976). And appropriately, it is the military's highest ranking legal officers that are vested with these review powers "[s]ince the decision to remove the fact of conviction is a judicial determination based on traditional legal grounds" 1968 U.S. Code Cong. & Admin. News, supra at 4515.

This does not mean, however, that petitioners are entitled to ~~extended~~ treatment of their claims. While whimsical or capricious decisionmaking ought play no part in this scheme, there is a place, and often a need, for abbreviated procedures. Short form opinions, even in contested matters, are appropriate given the enormous case load generated by convicted personnel. The Judge Advocates General, may, as do the Courts of Military Review, render decisions in complex matters without enumerating their reasons or responding to claims of error. See e.g. United States v. Keenan, 18 U.S.C.M.A. 108, 39 C.M.R. 108 (1969); United States v. Hurt, 9 U.S.C.M.A. 735, 27 C.M.R. 3, pet.

[19a]

denied, 27 C.M.R. 512 (1958).

Hence, the summary treatment of Curci's petition was entirely proper, and the ultimate conclusion reached correct. In prosecutions under the Articles of War¹⁴ representation by a lay officer admitted to practice before courts martial does not per se violate a serviceman's sixth amendment right, Angle v. Laird, 429 F.2d 892, 895 (10th Cir. 1970); Harris v. Ciccone 417 F.2d 479, 484 (8th Cir. 1969) cert denied 397 U.S. 1078, 90 S.Ct. 1528 (1970); Smith v. McNamara, 395 F.2d 896, 900 (10th Cir. 1968) cert denied 394 U.S. 934, 89 S.Ct. 1211 (1969). As in civilian matters, the accused must show that counsel's efforts were so woefully inadequate as to make the trial "a farce and a mockery of justice." if he is to prevail on a claim of ineffective assistance. Williams v. Froehlke 356 F.Supp. 591, 594 (S.D.N.Y. 1973) aff'd 490 F.2d 998 (2d Cir. 1974). Curci failed to sustain his burden.

¹⁴ The Articles of War, originally enacted in 1920, proscribed military conduct and affairs until 1948, when they were superseded by the Uniform Code of Military Justice.

The subject prosecution being some thirty years old, we can but hypothesize about the reasons underlying the tactical decisions made. Counsel may have stipulated to the date Curci fled only to bar testimony concerning his prior unauthorized absences. While it may arguably be said that counsel conceded certain elements of the offense, surely there was other available evidence. Base personnel or Curci's commanding officer could have corroborated his absence. As it was, the morning report extract of October 14, 1947 introduced into evidence revealed that Curci admitted the unauthorized nature of his absence when he surrendered. We cannot say, therefore, that counsel improvidently stipulated to the date of flight.

Nor can we say that Curci was ill-advised to take the stand in his own behalf. Through his testimony, Curci was able to show that he lacked the intent to desert. He painted a sympathetic portrait of one who cared deeply for the welfare of his sickly mother and who feared the consequences of the Hobson's choice he faced. And it was his testimony alone that formed the basis for the reduction in the conviction. Curci was fully advised of his right to testify, remain silent, or make an unsworn statement. He

[21a]

should not now be heard to complain of the alternative he chose.

Similarly, we find little merit to Curci's claim that counsel should have asserted the defenses of insanity or duress. Curci was examined immediately after his surrender and was found to be lucid, cooperative and suffering only from a mild immaturity reaction. There was no question over his fitness to stand trial. As there appeared no basis for an insanity defense, counsel's tactical decision not to raise it cannot be considered unsound. Wimberly v. Laird 472 F.2d 923, 925-26 (7th Cir.) cert. denied 413 U.S. 921, 93 S.Ct. 3071 (1973). On the other hand, recognizing merit in the reasons for Curci's actions, counsel elicited all of the facts concerning his dilemma on direct examination. That counsel did not argue duress by name is of little consequence. For he was successful in prompting the reduction in charge.

We might add that through all his several pleas, Curci has never denied his guilt. Rather, he has sought to rely on collateral matters in mustering an argument for relief. We find no merit to his claims. Accordingly, plaintiff's motion for summary judgment is denied. The Clerk of the Court

is directed to enter judgment in favor of the defendants and against the plaintiff dismissing the complaint, and it is

SO ORDERED.

U. S. D. J.

[23a]

RECORD OF TRIAL

(and accompanying papers)

of

USCOTI Almon 42 354 771
(Last name) (First name and middle initial) (Army serial No.)

Private, Detachment #3, 1268 SCU
(Grade) (Organization)

Fort Dix, New Jersey
(Station)

By

GENERAL COURT MARTIAL

Appointed by the Commanding Officer GENERAL

HEADQUARTERS, 91st INFANTRY DIVISION

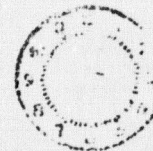
Tried at

Fort Dix, New Jersey 13 February, 1948

Attended by Division

Executive Officer

Adjutant General



RECEIVED
Department of the Army
J.A.G.O.

COVER SHEET

(Withdraw this cover sheet from set used to make carbon copy of record for accused and use as backing on original record.)

* W. D., A. G. O. Form No. 114
14 July 1943

* This form supersedes W. D., A. G. O. Form No. 114, 5 January 1943, which may be used until existing stocks are exhausted. 16-46,12-1

329686

[24a]

Exhibit "A"

A CHRONOLOGY OF THE CASE OF:

GURCI, ALFRED A. PVT 12 259 907 Ensignment #3, 1272 ASU Ft. Dix, NJ

	Date	No. of days	Explanation
1. Offense committed:	24 Dec 46		
2. Accused confined:			
By civil authorities			
By military authority	22 Jan 48	0	
By military authority ordering trial			
Reconfined from escape			
3. Charges preferred:	22 Jan 48	0	
(Date of Jurat)			
Forwards			
4. Charges investigated:	22 Jan 48	0	
(Date of Report)			
Resolved			
5. Charges forwarded by G.O.:	26 Jan 48	4	
Investigated			
6. Charges received by J.A.:	27 Jan 48	5	
7. Charges returned:			
8. Charges received back:			
9. Charges—action Staff J. A.:	2 Feb 48	11	
10. Charges referred for trial:	3 Feb 48	12	
11. Trial had:			
Total days to trial	19 Feb 48	28	Def not ready.
Less time in hospital			
Less delay at request of defense			
Net total			
12. Record of trial received:	13 Mar 48	57	Delay due to transcription of rec by rptr off this sta.
13. Review by Staff J. A.:	24 Mar 48	62	
14. Action by reviewing authority:	25 Mar 48	63	
Total to Action by Reviewing Authority		63	
15. Mimeo. orders received:	27 Mar 48	65	
16. Record of trial mailed to J. A. G. O.:	27 Mar 48	65	
Total		65	

Remarks:

Lowell L. Forbes
LOWELL L. FORBES

Lieut. Col. Inf. DIVISION Judge Advocate.

All delays must be fully explained.
In computing number of days between two dates, disregard the first day and count the last day. All months will not be assumed to consist of 30 days.

★ U. S. GOVERNMENT PRINTING OFFICE : 1945 16-30750-1

1A

[25a]

GENERAL COURT-MARTIAL DATA SHEET

Curci, Alfred A. 42 259 007 Private, Det #3, 100th ASV
(Last name) (First name) (Middle initial) (Army serial No.) (Grade) (Company, regiment, or arm of service)

G. O. C. M. No.

	TRIAL J. A.		STAFF J. A.		J. A. G. O.	
	Yes	No	Yes	No	Yes	No
1. Was court ordered by proper authority?	✓		✓			
2. Are all orders showing membership of court properly entered in record?	✓		✓			
3. Were there less than five members detailed or present at any meeting?		✓		✓		
4. Was the law member of the court designated by convening order?	✓		✓			
5. If the presence of the law member was specifically required by the convening authority, was he present at each session?	✓		✓			
6. Did the court have jurisdiction of person and offense?	✓		✓			
7. Does the record show place, date, and hour court convened?	✓		✓			
8. (a) Are all members of the court, trial judge advocate, assistant trial judge advocate, defense counsel, and assistant defense counsel accounted for as present or absent?	✓		✓			
(b) If absent, reason for absence given?	✓		✓			
9. Was accused asked whom he desired as counsel?	✓		✓			
10. Was reporter sworn?	✓		✓			
11. Is reporter's voucher attached to record or its absence explained?	✓		✓			
12. Was interpreter sworn?	✓		✓			
13. Is copy of record for each accused accounted for?	✓		✓			
14. Was accused extended right of challenge as to each member of the court, and was he instructed as to his right to exercise one peremptory challenge against any member except the law member?	✓		✓			
15. Was action of court upon challenges regular and properly taken?	✓		✓			
16. Was the court sworn?	✓		✓			
17. Was any officer sitting as a member of the court the accuser, a witness for the prosecution, or, upon a rehearing, one who sat as a member on the former trial?	✓		✓			
18. Was the personnel for the prosecution sworn?	✓		✓			
19. Was the accused properly arraigned?	✓		✓			
20. Are there copied into the record—						
(a) Charges and specifications?	✓		✓			
(b) Name, grade, and organization of the person signing charges?	✓		✓			
(c) Affidavit to the charges and specifications?	✓		✓			
(d) Name of the person who administered the oath verifying the charges, and his official capacity?	✓		✓			
(e) The order of reference for trial?	✓		✓			
21. If pleas of guilty were explained was accused's response, if any, recorded?	✓		✓			
22. Does each specification state an offense under the Articles of War?	✓		✓			
23. If the accused was advised of his right to plead the statute of limitations, was his response, if any, recorded?	✓		✓			
24. Are pleas of accused regularly entered?	✓		✓			
25. Were the witnesses sworn?	✓		✓			
26. Are the findings properly entered?	✓		✓			

W. D., A. G. O. Form No. 116
December 15, 1941

(OVER)

16-12344-3

329636

[26a]

	TRIAL J. A.		STAFF J. A.		J. A. O. O.	
	Yes	No	Yes	No	Yes	No
27. Was the vote upon each finding in closed session and by secret written ballot?	✓		✓		✓	
28. Is the evidence, if any, of previous convictions admissible? (Par. 79c, M. C. M.).	✓		✓		✓	
29. Was the vote upon the sentence in closed session and by secret written ballot?	✓		✓		✓	
30. Did at least two-thirds of members present at the time the vote on each finding was taken concur therein?	✓		✓		✓	
31. In each case of finding of guilty where death sentence was mandatory, did all members present concur in each finding?	✓		✓		✓	
32. Did members present concur in sentence, as follows: To death, all members; to life imprisonment or confinement for over ten years, at least three-fourths of members; to any other punishment, at least two-thirds?	✓		✓		✓	
33. Does the evidence sustain the findings of the court?	✓		✓		✓	
34. Are the findings legal?	✓		✓		✓	
35. Is the sentence legal?	✓		✓		✓	
36. Does any ruling of the court on the admission of evidence or other matters injuriously affect the substantial rights of accused?	✓		✓		✓	
37. Did all members who participated in proceedings in revision vote on original findings and sentence?	✓		✓		✓	
38. At proceedings in revision are the trial judge advocate, assistant trial judge advocate, defense counsel, assistant defense counsel, the accused, and the individual counsel, if any, accounted for as present or absent?	✓		✓		✓	
39. Is the record properly authenticated?	✓		✓		✓	
40. Does it sufficiently appear that the defense counsel accepts the record as correct?	✓		✓		✓	
41. Is action of reviewing authority properly entered in record and signed?	✓		✓		✓	
42. In case of adjournment or continuance, are each day's proceedings properly signed by trial judge advocate?	✓		✓		✓	
43. After each adjournment during trial, is presence or absence of members of court, trial judge advocate, assistant trial judge advocate, defense counsel, assistant defense counsel, accused, his individual counsel, and the reporter properly accounted for?	✓		✓		✓	
44. Does action of reviewing authority:						
(a) Expressly approve the sentence and order its execution or suspension?	✓		✓		✓	
(b) Designate the proper place of confinement?	✓		✓		✓	
(c) Is the action otherwise legal and properly taken?	✓		✓		✓	
45. Is clemency recommended by the court?	✓		✓		✓	

NOTE.—Questions 15, 19, 21, 22, 23, 33, 36, 41, and 44 not to be answered by the trial judge advocate. Question 44 not to be answered by the staff judge advocate.

Trial Judge Advocate: 1st Lt Hq. 1282 ASU
 (Date) 27 MAR 48
 Staff Judge Advocate: LORELL L. PERBES Lt Col, Inf 12
 (Date) 27 MAR 48
 Officer Reviewing Record: [Signature]
 (Action) 7. 47
 (Date) 27 MAR 48
 Chief Examiner: [Signature]
 (Date) 27 MAR 48

[27a]

HEADQUARTERS, 9TH INFANTRY DIVISION
Fort Dix, New Jersey

General Court Martial }
Order Number 52

25 March 1948

Before a General Court-Martial which convened at Fort Dix, New Jersey pursuant to paragraph 1C, Special Order No. 25, this Headquarters, dated 6 February 1948, was arraigned and tried:

Private ALFRED A. CURCI, 42 259 907, Detachment Number 3, 1262 Area Service Unit, Fort Dix, New Jersey.

CHARGE: Violation of the 58th Article of War.
Specification: In that Private Alfred A. Curci, Detachment #3, 1262 Area Service Unit, Fort Dix, New Jersey, then of Company B, 4th Training Battalion, Basic Training Group, Army Ground Forces, Replacement Training Center, Fort Dix, New Jersey did at Fort Dix, New Jersey on or about 24 December 1946, desert the service of the United States and did remain absent in desertion until he surrendered himself at Fort Dix, New Jersey on or about 14 October 1947.

PLPAS

To the Specification and the Charge: NOT GUILTY

FINDINGS

Of the Specification and the Charge: GUILTY

SENTENCE

To be dishonorably discharged the service, to forfeit all pay and allowances due or to become due, and to be confined at hard labor at such place as the reviewing authority may direct for one and one-half (1½) years.

The sentence was adjudged on 19 February 1948.

Only so much of the finding of Guilty of the Specification and the Charge as involves a finding of Guilty of absence without leave from 24 December 1946 to 14 October 1947 in violation of Article of War 61 is approved. Only so much of the sentence as provides for dishonorable discharge the service, forfeiture of all pay and allowances due or to become due and confinement at hard labor for six (6) months is approved and will be duly executed, but the execution of that portion thereof adjudging dishonorable discharge the service is suspended until soldier's release from confinement. The Post-Stockade, Fort Dix, New Jersey, or elsewhere as the Secretary of the Army may direct, is designated as the place of confinement.

BY COMMAND OF MAJOR GENERAL [Signature] Adjutant General

OFFICIAL:

ERNEST L. WEIZGER
1st Lieut., QMC
Actg Asst Adj General

Asslt. Chief Examiner, Military Justice Division, J.A. (POL AEMJA)

C. R. GILBERT
Colonel GSC
Chief of Staff

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March 21 1948

329696

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[28a]

HEADQUARTERS, 9TH INFANTRY DIVISION
OFFICE OF THE DIVISION JUDGE ADVOCATE

24 March 1948

STAFF JUDGE ADVOCATE'S REVIEW

UNITED STATES

v.
Alfred A. Cursi, 42 259 907 Pvt
Detachment #3, 1262d Area Service Unit

Present Age: 22 8/12

Date of Enlistment: 25 October 1945

Prior Service: None

Previous Convictions: None

Confined: 22 January 1948

Arrest of Quarters:

Accused Arraigned: 19 Feb 1948

Place of Trial: Fort Dix, N.J.

Charges and Specifications	Plea	Findings
CH I: Violation 58th Article of War	NOT GUILTY	GUILTY
Sp: Desertion from 24 Dec 1946 to 14 Oct 1947. (Surrender)	NOT GUILTY	GUILTY

Sentence: DD, TF, CEL 1 1/2 years.

Maximum Punishment: DD, TF, CEL 1 1/2 years.

1. EVIDENCE

a. For the Prosecution. Accused absented himself without leave from Company B, 43d Training Battalion, Ground Forces Replacement Center, Fort Dix, New Jersey, on 24 December 1946 (Record 6). On 14 October 1947 he was assigned to and joined Detachment #3, 1262d Area Service Unit, Fort Dix, New Jersey, claiming absence without leave from Company B, 38th Battalion, Replacement Training Center, Fort Dix, New Jersey (Record 7, Prosecution Exhibit 1).

b. For the Defence.

(1) Accused was informed of his rights as a witness and elected to testify under oath.

(a) Direct Examination. He is the accused, is in the military service, is 23 years of age, and is single (Record 8). He was inducted 25 Oct 1945. He has no foreign service. His family consists of his mother and six sisters. At the time of his induction he was working in their support. He terminated his education in the second term of high school. He surrendered at Fort Dix, New Jersey from his absence without leave. Since being in the service he has frequently responded to sick call because of a bad right testicle which he has been informed requires an operation (Record 9). He was fearful of such an operation. He was told by his Company Commander that he would have to submit to the operation, failing in which he would be court-martialed. This frightened him and he went absent without leave. While absent he had no operation or medical treatment. Prior to his entrance into the service a sister also helped support the family. During his service he has also contributed to their support. At

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[29a]

The time he went absent his mother had heart trouble and his absence might result in her death (Record 10). At the beginning of his absence he told his mother he had a leave but later informed her that he was absent without leave. Since his return to Fort Dix the operation in question was performed on him at Tilton General Hospital. He was discharged as well and the operation was reported a success (Record 11). However, he still has continuous pains in his abdomen, testicle, back and left leg. His physical condition existed before his entry into the Army but he was never treated for it. He disclosed it at the time he was inducted. He remained absent without leave for such a long period of time because of his fear of the operation or the consequences of his failure to have it performed. The condition of his mother and home were only secondary reasons for his absence. He did not intend to desert (Record 12). His mother urged him to return to the Army and he finally did so because his trouble with the military authorities caused her to have a stroke (Record 13).

(b) Cross Examination. He returned to Fort Dix 14 October 1947. When he left he intended to return when he overcame his fear. At that time he did not know just when he would return. He did not work while he was home but he did contribute to the support of the family by comforting his mother with his presence and helping with the housework (Record 14).

(c) By the Court. He went absent without leave 24 December 1946 (Record 15). He was stationed at Fort Dix when he went absent but does not know the organization to which he belonged (Record 16).

(d) Stipulations.

(1) Dr. Arthur M. Farsky. It was stipulated, in open court, that if this witness were present he would testify that he is a resident of Brooklyn, New York, and that Mrs. Carmela Curci has been under his care for hypertensive heart trouble (Record 17).

(2) Anna Graziano. It was stipulated, in open court, that if this witness were present she would testify she is a resident of Brooklyn, New York; that she has known Carmela Curci, mother of the accused, for the past 10 years; that since the death of the father of the accused his mother has found it hard to get along and is in need of her son (Record 17).

(3) Rev. John J. Fleming. It was stipulated that if this witness were present he would testify that he is a resident of Brooklyn, New York, and that the nervous disposition of the accused has been considerably aggravated by the death of his father (Record 18).

2. OPINION

It will be observed, from the abstract of the evidence for the Prosecution, paragraph 1a supra, that the initial unauthorized absence of the accused was not proved by any evidence, documentary or otherwise, offered by the Prosecution. Such initial absence was established by the Prosecution by means of a stipulation between the Defence and the accused that the latter did absent himself without leave from the unit and on the date as pleaded in the Specification of the Charge. The Court satisfied itself that the accused understood the stipulation, that he understood that he did not need to agree to it, and that he understood that if he did not agree to it, Prosecution would have to make its proof by other means. By the accused's action, he "stipulated himself out of court," i.e., he established a prima facie case of absence without leave and supplied the proof thereof, which apparently was otherwise unavailable, to the Prosecution at that stage of the trial. In such circumstances it would have been the better practice for the Law Member to have enlarged upon the effect of the stipulation to the end that the accused would fully appreciate the legal scope of the stipulation. However, in view of the fact that during his own testimony, under oath, the accused judicially confessed his unauthorized absence, it may not be said that the stipulation was improvident or prejudicial.

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Intent is an essential element of the offense charged. The record is silent with respect thereto except for the testimony of the accused, on cross examination, that at the time he went absent without leave he intended to return when he overcame his fear, and that he did not know just when he would return. This testimony, of course, does not refute intent; on the contrary, such intent as existed was to be implemented on the happening of a contingency which might never happen. The fact that the accused did not pursue gainful employment while absent, plus his return to and surrender at his proper station, tend to negative the intent to desert. The only other factor bearing on intent is the period of absence, from 24 December 1945 to 14 October 1947, which may well be considered protracted. It is fundamental that the burden is on the Prosecution to establish each and every element of the offense charged beyond reasonable doubt. It cannot be said, as a matter of law, that the record hereinabove outlined is sufficient for that purpose. It follows that the accused should have been found guilty of the lesser included offense of absence without leave for the period alleged in violation of the 61st Article of War, and that the sentence adjudged therefor should have been, at most, that authorized by the Table of Maximum Punishments, to wit: dishonorable discharge, total forfeitures, and confinement at hard labor for six months.

The record reveals no errors or irregularities prejudicial to any substantial right of the accused and it is legally sufficient to sustain the findings and the sentence except as hereinabove limited.

3. COMMENT

a. Military Record. Accused is 22 8/12 years of age; has no prior service; was inducted 25 October 1945. In addition to the offense herein charged his Service Record discloses the following unauthorized absences: 13 April 1946 to 15 April 1946; 3 June 1946 to 12 July 1946; and 13 July 1946 to 8 November 1946. He has no record of previous convictions. He has no foreign service. His only decoration, citation, or award is a World War II Victory Medal. His Service Record bears five indorsements, the second of which rates both his character and efficiency as excellent. The remaining four show character and efficiency "unknown." He has a Class "F" allotment.

b. Civilian Background. This soldier is a native of Brooklyn, New York. He terminated his formal education at age 17 after completing 8 1/2 years of a trade high school. He had no interest in such schooling but desired to secure an education in the field of music. While in school he was active in sports and social affairs. He was guilty of frequent truancy. During the three years between his formal education and his induction in the Army, he held innumerable jobs, the longest for 8 months paying him \$40.00 per week. At home he was constantly nagged at by his sisters who did not consider him on an equal level with them. He was completely ignored and given very little attention by other members of the family. His father died in 1945. In 1943 he was rejected for the service because of physical disability but was finally inducted the Fall of 1945. There is no evidence that he had conflicts with civil authorities. He is not married. There is no indication that he uses alcohol or drugs. When the psychiatrist interviewed him he learned that the accused was the youngest of seven children and gained the impression that the accused had been "babied" and petted all his life. This does not reconcile with soldier's version outlined above, which was related by him to the social worker.

c. General. There is nothing particularly derogatory in the civilian background of this soldier. Because of his numerous absences without leave, including the current offense, his military record leaves much to be desired. The only apparent motive for the absence charged, in this case, was an alleged fear on the part of the accused because of a prospective operation or punishment for failure to submit to the operation. He candidly admits that concern over the condition of his mother and his sisters was a secondary cause of his absence. The psychiatrist gives a diagnosis of Immaturity Reaction, Mild. He recommended continued duty and stated that there is no reason why soldier cannot function in the Army. From this, it may be concluded that the psychiatrist is of the opinion that the accused may be successfully rehabilitated. That is doubtful in view of the comparatively brief period of confinement which may be legally sustained as

[31a]

aforesaid. On the basis of the entire record, however, suspension of the execution of the dishonorable discharge is considered advisable until soldier's release from confinement.

The sentence adjudged by the Court is excessive for the offense of which the accused is legally convicted to the extent that the confinement portion thereof exceeds six months.

4. RECOMMENDATION

It is recommended that only so much of the finding of guilty of the Specification and the Charge as involves a finding of guilty of absence without leave from 24 December 1946 to 14 October 1947 in violation of Article of War 61 be approved; that only so much of the sentence as provides for dishonorable discharge the service, forfeiture of all pay and allowances due or to become due and confinement at hard labor for six months be approved and duly executed but that the execution of that portion thereof adjudging dishonorable discharge be suspended until soldier's release from confinement; and that the Post Stockade, Fort Dix, New Jersey, or elsewhere as the Secretary of the Army may direct, be designated as the place of confinement.

5. FORM OF ACTION

A form of action designed to implement this recommendation is attached.

1 Att.

Lawrence L. Forbes
LAWELL L. FORBES
Lt Col, Infantry
Division Judge Advocate

[32a]

329696

11

(WRITE NOTHING ABOVE THIS LINE)

CHARGE SHEET

Fort Dix, New Jersey, 22 January, 1943
(Place) (Date)

Name, etc., of accused Curci, Alfred A. 12 259 907, Private, Detachment #3, 1252 Area
(Give last name, first name, and middle initial in that order followed by serial number, grade, company, regiment, arm or service, or by other appropriate description of accused. Alias names, etc., to follow in same manner)

Service Unit, Fort Dix, New Jersey
(arm or service, or by other appropriate description of accused. Alias names, etc., to follow in same manner)

Present Class "F" Deduction
Age 22 8/12 Pay, \$ 75.00 per month. Allotments to dependents, \$ 22.00 per month.
(Base pay plus pay for length of service)
Government Insurance deduction, \$ 6.50 per month.

Data as to service: No prior service. Inducted 25 October 1945, ABIS, New York
(As to each terminated enlistment, give including dates of service and organization in which serving at termination. As to current enlistment, give the initial date and the term thereof. Give similar data as to service not under an enlistment)

Data as to witnesses, etc.:
(Give names, addresses, and note if for accused. List documentary evidence and note where each item thereof)

FOR THE ACCUSED:

(May be found)

None

AGAINST THE ACCUSED:

WILLIAM F. PORTER, Captain, Quartermaster Corps, Commanding Officer, Detachment #3, 1252 Area Service Unit, Fort Dix, New Jersey

DOCUMENTARY EVIDENCE:

Extract copies of Morning Reports

Data as to restraint of accused: Confined 22 January 1943, Post Stockade, Fort Dix, New Jersey
(Give date, place, and initial date of any restraint of accused)

Jersey

W. D., A. G. O. Form No. 113
8 July, 1942

(1)

329696 -

1-31-4

[33a]

CHARGE : Violation of the _____ 58th _____ Article of War.

Specification : In that Private Alfred A. Curci, Detachment 3, 1262 Area Service Unit, Fort Dix, New Jersey, then of Company E, 43d Training Battalion, Basic Training Group, Army Ground Forces, Replacement Training Center, Fort Dix, New Jersey, did at Fort Dix, New Jersey on or about 24 December 1946 desert the service of the United States and did remain absent in desertion until he surrendered himself at Fort Dix, New Jersey on or about 15 October 1947.

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13

(Additional sheets, if necessary, for charges and specifications will be attached here. Ordinary 8 by 12 1/4-inch paper will be used for additional sheets)

(2)

WRITE NOTHING BELOW THIS LINE

110-27700-2

[34a]

(WRITE NOTHING ABOVE THIS LINE)

(Signature of accuser)

WILLIAM F. PORTER, Captain, GAC, CO, Det
#3, 1262 ASU, Fort Dix, New Jersey

(Grade, organization, arm, or service)

AFFIDAVIT

Before me, the undersigned, authorized by law to administer oaths in cases of this character, per-

sonally appeared the above-named accuser this 22d day of January, 1943, and made oath that he is a person subject to military law and that he personally signed the foregoing charges and specifications, and further that he ~~has personal knowledge of the facts set forth in specifications~~

////////// (Indicate by specification and charge numbers) //////////; and *has investigated the matters set

forth in specifications 1 of the charge and the charge (Indicate by specification and charge numbers), and that the same are true in fact, to the best of his knowledge and belief.

(Signature)

JAMES T. COLEMAN, Captain, Infantry, Acting
Assistant Adjutant General, Hq 9th Infantry
Division, Fort Dix, New Jersey

NOTES.—At (*) strike out words not applicable.

If the accuser has personal knowledge of the facts stated in one or more specifications or parts thereof, and his knowledge as to other specifications or parts thereof is derived from investigation of the facts, the form of the oath will be varied accordingly. In no case will he be permitted to state alternatively, as to any particular charge or specification, that he either has personal knowledge or has investigated.

If the oath is administered by a civil officer having a seal, his official seal should be affixed.

1st IND.

Headquarters 9th Inf Div, Ft Dix, NJ; (Place) 3 Feb, 1943 (Date)

Referred for trial to CAPT RAYMOND C BISHOP, GAC, Trial Judge Advocate
(Grade, name, and organization of summary court, or trial judge advocate)

of the General court-martial appointed by paragraph 19, Special Orders

(Summary) (Trial judge advocate of special or general)

No. 1 Headquarters 9th Inf Div, Ft Dix, NJ; 5 Jan 43; as amended by par, 10, 19,
SO 2, this Hqs, 6 Jan 43; and par 7, SO 4, this Hqs, 8 Jan 43.

By COMMAND of

(Command or order)

MAJOR GENERAL EAGLES:

(Grade and name of commanding officer)

Ernest L. Metzger, Adjutant.

ERNEST L. METZGER
1st Lt., GAC
Actg Asst Adj Gen

(3)

14

[35a]

(SPACE FOR USE WHERE TRIAL IS BY SUMMARY COURT)

CASE No.

SPECIFICATIONS AND CHARGES	PLEAS	FINDINGS	SENTENCE OR ACQUITTAL AND REMARKS

Place _____, Date _____, 19____

(Signature, grade, and organization)

Summary Court.

Headquarters _____, 19____
(Place and date)

(Place and date)

(Action of reviewing authority)

_____, *Commanding.*
(Signature, grade, and organization)

Entered on service record in cases of conviction _____
(Initials of personnel adjutant)

(Initials of personnel adjutant)

(4)

(WRITE NOTHING BELOW THIS LINE)

16-27702-2

[36a]

Fort Dix, New Jersey

Date: 27 January 1948

SUBJECT: Report of Investigation in the case of GURCI, Alfred A. PFC
Name Grade

42 252 907, Det #3, 1262d ASU

Serial Number Organization

1. Pursuant to instructions, the undersigned has thoroughly and impartially investigated the attached charges. The investigation was made in accordance with the requirements contained in AR 70 and Par 32a, LHM, p. 24. At the outset of the investigation the accused was informed of the offenses charged against him; the names of the accuser and of the witnesses then known to the undersigned; the fact that the charges were about to be investigated; his right to cross-examine any witnesses called and to present anything he might desire in his own behalf, either in defense or mitigation; his right to have the investigating officer examine available witnesses requested by him; his right to make or submit a statement in any form, subject to the risk of having such statement used against him; his right to counsel, if he so desired, at this investigation. The accused was advised of his rights and did not desire counsel present at this investigation.

2. Statements of witnesses, attached to the charge sheet, were read to the accused. He was given the right to have these witnesses available for cross-examination. He did (not) desire to call witnesses.

3. The documentary evidence, including evidence of prior convictions, was shown to the accused and is appended hereto.

4. The following witnesses were questioned and statements made are appended hereto. (none)

5. After being warned of his rights under the 24th article of War, the accused (~~under investigation, under investigation, under investigation~~) (chose to remain silent).

6. There is (not) reasonable ground to believe that the accused is, or was at the time of the offense, mentally defective, deranged or abnormal.

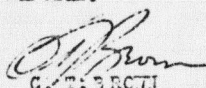
7. Mitigating circumstances, if any, are disclosed in paragraph 8 of this report.

8. Disposition of charges recommended:

An unauthorized absence of over eleven months, terminating in surrender, is proved, for which the accused offers no explanation. From the excessive length of absence a court may properly infer desertion.

It is noted that the extract copy of M.R. of Co."B", 43d Tng Bn is headed 28 Dec 47. However, the extract clearly shows that the absence commenced 24 Dec 46.

Recommend trial by General Court Martial.


G. E. BROTH
Lt. Col., Infantry
Investigating Officer.

[37a]

323696

EXTRACT FROM SERVICE RECORD

1. LAST NAME—FIRST NAME—MIDDLE INITIAL Curci, Alfred A.		2. ARMY SERIAL NO 42259907		3. GRADE Private	
4. TRANSFERRED THIS ORGANIZATION FROM (Unit and Station) Hq RTC, Ft Dix, NJ		5. AUTHORITY (Par. and Order number, date and source) AR 615-300			
6. FILL IN ITEMS 7-11 ONLY WHEN APPLICABLE TO ORGANIZATION PREPARING THIS EXTRACT. IF APPROPRIATE ENTRY FOR ALL ITEMS 7-11 IS "NONE", ENTER "NONE" IN SPACE TO RIGHT OF ITEM 6 AND LEAVE ITEMS 7-11 BLANK.					
7. DATE AND PLACE OF DEPARTURE FROM U. S. FOR FOREIGN SERVICE None		8. DATE AND PLACE OF ARRIVAL IN U. S. FROM FOREIGN SERVICE None			
9. DECORATIONS, CITATIONS AND AWARDS (Authority and date of issuance) Victory Medal					
10. TIME LOST TO BE MADE GOOD UNDER 107TH ARTICLE OF WAR (Show inclusive dates of absence, number of days and source) 13 Apr 46 to 15 Apr 46; 3 Jun 46 to 12 Jul 46; 13 Jul 46 to 8 Nov 46; 24 Dec 46 to 13 Oct 47 -- 456 days AWOL					
11. SENTENCES BY COURTS-MARTIAL, TYPE, ARTICLE OF WAR, COURT-MARTIAL ORDER NO., DATE AND SENTENCE None					
12. FROM (Designation and station of soldier's unit) Hq RTC, Ft Dix, NJ					
13. TO (Unit and station to which soldier transferring—if AWOL see TM 13-220) The Adjutant General					
14. AUTHORITY (Par. and Order number, date and source) AR 615-300		15. DATE DEPARTED 24 Dec 46		16. CHARACTER 5th Unknown	
19. LAST PAID TO INCLUDE (Date) May 46		19. PAID BY (Name and grade of disbursing officer) Unknown		17. EFFICIENCY RATING 4th " "	
				3d " "	
				2d Excellent Excellent	
				1st Unknown Unknown	
20. AMOUNT DUE U. S. (If nothing, so state)					
21. AMOUNT DUE SOLDIER (Other than accrued pay and allowance since date shown in item 18)					
22. REMARKS (Enter such additional data as may be required to make extract complete. Include items of additional pay, i. e., flying, parachute, etc. Reverse of this form may be used to complete remarks.)					
23. INDICATE ACTIVE DEDUCTIONS AND ALLOTMENTS BY CLASSES AND AMOUNTS		N - 6.50			
24. DATES THROUGH WHICH DEDUCTIONS AND ALLOTMENTS LAST DEDUCTED		F 22.00			
25. HOME ADDRESS 2071 69th Street, Brooklyn, New York		I HAVE PERSONALLY VERIFIED ALL THE FOREGOING ENTRIES (Typed name, grade, and arm or service) James T. Coleman			
26. NAME AND ADDRESS OF EMERGENCY ADDRESSEE Carmela Curci (Mother) same as above		SIGNATURE JAMES T. COLEMAN, Capt, Inf, Actg Asst AG, Hq 9th Inf Div, Ft Dix, NJ			

[38a]

BOARD OF PREVIOUS CONVICTIONS EXTRACT COPY OF SERVICE RECORD

IDENTIFICATION		
LAST NAME—FIRST NAME—MIDDLE INITIAL	ARMY SERIAL NO.	GRADE
Curci, Alfred A.	42259907	Pvt
		ORGANIZATION
		Detachment #3

RECORD OF TRIALS BY COURTS-MARTIAL		
CM	AW	SYNOPSIS OF SPECIFICATIONS
DATE OF OFFENSE		N O N E
DATE SENTENCE ANNOUNCED AND ADJUDGED		SENTENCE AS APPROVED
DATE APPROVED		
I CERTIFY THE ABOVE IS CORRECT		
TYPED NAME, GRADE, AND ORGANIZATION OF PERSONNEL OFFICER		SIGNATURE

RECORD OF TRIALS BY COURTS-MARTIAL		
CM	AW	SYNOPSIS OF SPECIFICATIONS
DATE OF OFFENSE		
DATE SENTENCE ANNOUNCED AND ADJUDGED		SENTENCE AS APPROVED
DATE APPROVED		
I CERTIFY THE ABOVE IS CORRECT		
TYPED NAME, GRADE, AND ORGANIZATION OF PERSONNEL OFFICER		SIGNATURE

RECORD OF TRIALS BY COURTS-MARTIAL		
CM	AW	SYNOPSIS OF SPECIFICATIONS
DATE OF OFFENSE		
DATE SENTENCE ANNOUNCED AND ADJUDGED		SENTENCE AS APPROVED
DATE APPROVED		
I CERTIFY THE ABOVE IS CORRECT		
TYPED NAME, GRADE, AND ORGANIZATION OF PERSONNEL OFFICER		SIGNATURE

RECORD OF TRIALS BY COURTS-MARTIAL		
CM	AW	SYNOPSIS OF SPECIFICATIONS
DATE OF OFFENSE		
DATE SENTENCE ANNOUNCED AND ADJUDGED		SENTENCE AS APPROVED
DATE APPROVED		
I CERTIFY THE ABOVE IS CORRECT		
TYPED NAME, GRADE, AND ORGANIZATION OF PERSONNEL OFFICER		SIGNATURE

CERTIFICATION		
DESIGNATION OF COMMAND	STATION	DATE
Detachment #3, 1262 ASU	Fort Dix, New Jersey	22 Jan 48
I CERTIFY THAT I AM THE OFFICIAL CUSTODIAN OF THE SERVICE RECORD OF THE ABOVE-NAMED SOLDIER AND THAT THE FOREGOING IS A TRUE COPY OF THE ENTRIES THEREIN RELATING TO PREVIOUS CONVICTIONS.		
TYPED NAME, GRADE, AND ORGANIZATION OF PERSONNEL OFFICER		SIGNATURE
JAMES T. COLEMAN, Capt, Inf, Actg Asst AG, Hq 9th Inf Div, Ft Dix, NJ		<i>James T. Coleman</i>

WD AGO FORM 257
1 MAY 1943

U. S. GOVERNMENT PRINTING OFFICE 16-44204-1

20

[39a]

MENTAL HYGIENE CONSULTATION SERVICE
NINTH INFANTRY DIVISION
Fort Dix, New Jersey

hml
15 October 1947

201-CURCI, Alfred A. Pvt 42 259 907
Det #3, 1262nd ASU

Summary of Neuropsychiatric Evaluations

1. This 22 year old, white EM was referred for consultation by Det #3 where he is awaiting courts-martial action on an MCL from December 1946 to October 1947.

2. a. SOCIAL: EM was born on 15 May 1925 in Brooklyn, New York where he has lived all of his life. In 1945, EM's father died of "stomach cancer" and since 1945, EM's mother has been seriously ill with "hypertension". EM has 6 sisters, all older than he. EM explains that his sisters have constantly nagged at him and that he has "never been treated on an equal level" with his sisters. He states that he is ignored a great deal at home and given very little attention when he tries to speak.

EM completed 3 1/2 years of high school at age 17. The first two years were spent in a trade school doing work he "despised". He states that his interest was in music but that his sister made him go to trade school. Shortly after transferring to a high school where he could major in music, he had to leave in order to help support the family. EM was truant quite a bit in school and was active both in sports and social activities. From the time he left school until he was inducted into the Army three years later, EM states "I must have held 50 different jobs". The longest held job was 8 months paying \$40.00 per week. For several months prior to induction, EM was unemployed. In 1943, EM suffered from "nervousness" manifested in the feeling that there was a "weight" on his chest. He was treated at home, but not too successfully. His condition was aggravated considerably by the nagging of his sisters. In 1943, EM was rejected because of a "fluid in his testicle". On 25 November 1945, when the condition was worse, EM was drafted into the Army through 39 Whitehall Street, New York City. He has been due for operations on his testicle several times but always avoids them as he expresses a great deal of fear over the operation and its results. This feeling of fear over the operation coupled with the serious condition his mother is in at home, has prompted him to go MCL several times. EM made application in early 1946 for a dependency discharge but heard nothing about it.

From 4 June 1946 until 12 July 1946, EM went MCL and was apprehended but EM states no punitive measures were taken. From 15 July until 30 November 1946, EM was MCL again and apprehended a second time. EM went MCL the last time from December 1946 until 10 October 1947 when he turned himself in. At present EM is assigned to Det #3, 1262nd ASU, where he is awaiting courts-martial action. He states that he is still in need of an operation and that his mother is still seriously ill.

EM bites his fingernails and smokes from 1-2 packages of cigarettes per day. He states he has occasional dizzy spells. Several times during his life, he has thought of suicide, but has never taken overt acts in that direction. In 1946, on "2 or 3" occasions, EM was hospitalized at Tilton General Hospital for "nervousness" manifested by headaches, heart pains and nasal congestion.

Throughout interview, EM was alert and cooperative. He indicated some difficulty in remembering some dates, though. He offered information readily and expressed a strong desire for some solution to his problem. WEA

b. **NOTE:** An obese, 22 year old TM referred for consultation prior to trial by courts-martial.

History reveals, TM youngest of 7 children, 6 older than he are sisters. He has been babied and petted all his life. If he had slightest illness, he has gotten out of work. Never has been able to hold a job and while TCI, didn't work. He states that his mother is ill and financially insecure but while home did nothing to alleviate this situation.

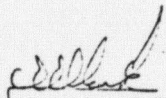
On examination, he attempted to feign nervousness, complained of how nervous he was, stated he had been hospitalized 3 times for nervousness (Hospital records were checked and previous hospitalizations were for nasal-pharyngitis). There is no disorder of mood or affect. TM is of normal intelligence - some neurotic traits noted, mainly nails well bitten down. TM complains of numerous aches and pains but when finally broken through, admits they are vague and don't bother him much. He complains of difficulty with testicles which will be thoroughly evaluated by medical examination.

There is no reason why this TM cannot function in the Army. There is no severe psychiatric disease in this case. RCT

Accused at the time of alleged offense was sufficiently free from mental disease and defect to be able to distinguish right from wrong and adhere to the right. He has sufficient mental capacity to assist in his own defense. His physical and mental condition will not result in excessive hospitalization and he will not be an intolerable burden on military personnel charged with his custody.

3. **DIAGNOSIS:** Immaturity reaction, mild.

4. **RECOMMEND:** a. Continue duty.
b. Restriction pending trial.


ERNEST E. CLARK
Captain, MC
Chief, Mental Hygiene
Consultation Service

1. MEDICAL HISTORY - The medical officer shall associate upon the conditions listed in item 7, WORKING PART OF THE REPORT, a list of major findings and remarks on pages 1 and 2 of the OTHER SIDE OF THIS REPORT. (If necessary, use additional sheet of paper.) 2. INTELLIGENCE STANDARDS	
HIGH SCHOOL GRADUATED ☐ YES ☐ NO	ENGLISH SPEAK FIRST ☐ YES ☐ NO
3. GENERAL EXAM 4. COLOR OF HAIR: Black 5. POSTURE: Fair 6. HEIGHT (Inches): 67 1/2 7. COLOR OF EYES: Brown 8. FRAME: Heavy 9. WEIGHT (Pounds): 211	
10. VISION UNCORRECTED: RIGHT EYE 20/100 LEFT EYE 20/20 CORRECTED: RIGHT EYE 20/20 LEFT EYE 20/20 11. HEARING (Whispered voice): RIGHT EAR 15 /ft. LEFT EAR 15 /ft.	
12. PULSE SITTING: 68 AFTER EXERCISE: 100 1 MINUTES AFTER EXERCISE: 70	
13. BLOOD PRESSURE SYSTOLIC: 110 DIASTOLIC: 60	
14. URINALYSIS SP. GR. 1.018 SUGAR: Neg ALBUMIN: 100 MICROSCOPIC: Immaturity reaction, mild	
15. NEUROPSYCHIATRIC reaction, mild	
16. ENDOCRINE DISTURBANCES	
17. REMARKS ON DEFECTS NOT SUFFICIENTLY DESCRIBED ABOVE (Use additional sheets if necessary)	
18. SUMMARY OF DEFECTS IN ORDER OF IMPORTANCE, IMPRESSION OF PHYSICAL FITNESS 21, 1	
19. I CERTIFY THAT I HAVE CAREFULLY EXAMINED THE APPLICANT AND HAVE CORRECTLY RECORDED THE RESULTS OF THE EXAMINATION AND THAT, TO THE BEST OF MY JUDGMENT AND BELIEF:	
☒ A. HE IS MENTALLY AND PHYSICALLY QUALIFIED FOR SERVICE IN THE UNITED STATES ARMY IN A GENERAL SERVICE CAPACITY. ☐ B. HE IS ☐ PHYSICALLY ☐ MENTALLY DISQUALIFIED FOR SERVICE IN THE UNITED STATES ARMY BY REASON OF:	
PLACE: OFFICE OF POST SURGEON DISBURSARY SERVICE, FT. RIX, N.J.	SIGNATURE: <i>Donald L. Gmever</i>
DATE: 21 Oct 1947	NAME (Typed or stamped): DONALD L. GMEVER
GRADE: 1st Lt., M.C.	

¹When indicated. ²Check blocks indicated.

FINGERPRINTS—RIGHT HAND

Page 3 of WD AGO Ferry H. 1 May 1931

(Fingerprint impressions will be made in this space in the case of every man enlisting and reenlisting in the Regular Army)

1. THUMB	2. INDEX	3. MIDDLE	4. RING	5. LITTLE
				25

22

(3)

10-45 (x4)

[42a]

HEADQUARTERS, 9TH INFANTRY DIVISION
Office of the Division Judge Advocate

AHMJA
201 Pvt Alfred A Curci

Fort Dix, N.J.
2 February 1948

SUBJECT: Recommendation as to Disposition of Court-Martial Charges

TO : Commanding General, 9th Infantry Division, Fort Dix, N.J.

1. Pursuant to the provisions of AR 70 and Par 35b MCM 1928, and mindful of Par 35c MCM 1928, I have examined the attached charges and related papers in the case of Pvt Alfred A Curci, 42 259 907, Detachment #3, 1262d Area Service Unit, Fort Dix, N.J.

2. Accused is charged with violation of the 53th Article of War, desertion from 24 December 1946 to 14 October 1947 terminated by surrender.

3. Soldier is 22 years of age; Class F All otment of \$22.00; no prior service; inducted 25 October 1945; confined in Post Stockade 22 January 1948. His record of previous convictions shows no entries. His service record indicates three additional unauthorized absences, totaling 159 days, for which he has not been tried.

4. This soldier is diagnosed by the Mental Hygiene Service as suffering from immaturity reaction, mild. It is said there is no reason why he cannot function in the Army, there being no severe psychiatric disease present. While he intimates that the illness and financial insecurity of his mother was the cause of his AWOL, he nevertheless did not work during his absence and apparently did nothing to alleviate the situation. He expresses some fear over the imminence of an operation which is necessary. This fear, too, is urged by him as a reason for his AWOL.

His family background indicates he is the youngest of seven children, the other six being his sisters. He has been babied and petted all his life and has never been able to hold a job. In his interview with the Mental Hygiene Service he attempted to feign nervousness and misstated the cause of the three instances he was hospitalized. He is judged to be of normal intelligence.

5. Adequate competent evidence is available to sustain a prima facie case of guilt. There are no facts in extenuation or mitigation. At the time of the alleged offense the accused had the mental capacity to distinguish right from wrong and adhere to the right. He is capable of assisting in his own defense.

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[43a]

ARMJA
201 Pvt Alfred A Curci

6. In view of the lengthy AWOL in this case, trial of the accused by General Court-Martial is recommended.

1/1/48
Tracy

1 Att File

James L. Forbes
JAMES L. FORBES
Lt Col, Infantry
Division Judge Advocate

[44a]

(Proper)

of

Curci Alfred A. 42 250 907 ✓
(Last name) (First name and middle initial) (Army serial No.)

Private, Detachment #3, 12622 ASU

Fort Dix, New Jersey
(Station)

By

GENERAL COURT MARTIAL

Appointed by the Commanding Officer ~~XXXX~~ GENERAL

HEADQUARTERS, 9TH INFANTRY DIVISION

Tried at

Fort Dix, New Jersey 19 February, 1948 ✓

Index	Page
Arraignment	4 ✓
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Statement by accused	
Findings	19 ✓
Sentence (or acquittal)	20 ✓
Proceedings in revision	

TESTIMONY

[illegible]

10--36759-1

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[45a]

EXHIBITS, ETC., APPENDED

[illegible]

RECEIPT FOR COPY OF RECORD

I hereby acknowledge receipt of a carbon copy of the above described record of trial,
delivered to me at Box 5000000 5000000
this 15th day of MARCH, 1948

16-6653-1

(Signature of accused)

Alfred A. Curci

[46a]

HEADQUARTERS, 8TH INFANTRY DIVISION
Fort Dix, New Jersey

SPECIAL ORDERS)

6 February 1948

NUMBER 23)

EXTRACT

10. A General Court-martial is to meet at Ft Dix NJ, 8 Feb 48, or as soon thereafter as practicable, for the trial of such persons as may be properly brought before it.

DETAIL FOR THE COURT

COL LOUIS S. SICKNEY, 07515, 80th Inf Regt
COL WILLIAM B. CARLOCK, 01400, 384th Inf Regt LIAISON
COL RAYMOND M. LIGHTFOOT, 0140473, Hq 8th Inf Div (GRC)
LT COL THOMAS M. CHILES, 0140100, Hq 1262d ASU
LT COL RICHARD E. LAMM, 0140117, Hq 9th Inf Div
LT COL LAWRENCE A. RICHNER, 0140101, 30th Inf Regt
MAJ WILLIAM C. SHARP JR., 0140100, 8th Inf Div
MAJ GEORGE S. MARTIN, 0140270, Hq 1262d ASU
MAJ EDWARD G. CORBIN, 0140101, Hq 1262d ASU
MAJ KEITH M. NICE, 0140268, Hq 1262d ASU
MAJ LLOYD F. WIREY, 0140014, Hq 9th Inf Div
1ST LT FREDERICK M. COLLS, 0140312, 365th Inf Regt

CAPT RAYMOND C. BISHOP, 0403427, Hq 8th Inf Div TRIAL JA
1ST LT RAY A. MCKILSEY, 0140478, Hq 1262d ASU ASST TRIAL

CAPT DAN CUNILL, 0140317, Hq 9th Inf Div DEF COUNSEL
CAPT ARTHUR H. COLVIN, 01403712, Hq 1262d ASU ASST DEF COUNSEL
1ST LT JOSEPH L. BAILEY, 0140247, 384th Inf Regt ASST DEF COUNSEL
2ND LT WILLIAM L. STRIFLIN, 0140302, Hq 9th Inf Div ASST DEF COUNSEL

All unarraigned cases in the hands of the Trial JA of GCM aptd per par 19, SO 1, this Hq, dtd 5 Jan 48; as amended by par 19, SO 2, this Hq, as, dtd 6 Jan 48, and par 7 SO 4, this Hq, as, dtd 8 Jan 48, will be brought to trial before the court hereby aptd.

BY COMMAND OF MAJOR GENERAL EAGLES:

OFFICIAL L:

LLOYD F. WIREY
Major
Asst Adj Gen

C. R. GILBERT
Colonel GSC
Chief of Staff

DISTRIBUTION: "C", 4 serge Ctr . . . 50 (5 to en C), COURT MARTIAL SECT- 200.

[47a]

Port Dix, New Jersey
(Place)

19 February, 1948
(Date)

ORGANIZATION OF THE COURT

The court met pursuant to the foregoing order at 10:45 o'clock A.M.

PRESENT

Col Willard B Carlock, 016790, 364th Inf Regt 1262d ASU
Col Raymond M Lightbody, 0184478, Hq 9th Inf Div (COC)
Lt Col Ralph E Lanham, 0436437, Hq 9th Inf Div
Maj Walter C Sharp Jr, 031408, Hq 9th Inf Div
Maj George S Martin, 0192770, Hq 1262d ASU
Maj Edmund G Correia, 01573131, Hq 1262d ASU
Maj Keith L Rice, 0328868, 1st Det 1262d ASU
Maj Lloyd P Kirby, 01000144, Hq 9th Inf Div
1st Lt Frederick M Coles, 01328312, 365th Inf Regt

1st Lt Ray A McKinsey, 0524579, Hq 1262d ASU ASST TJA
Capt Dan O'Neil, 01318217, Hq 9th Inf Div DEF COUNSEL

ABSENT

✓ Col Louis S Stickney, 07515, 36th Inf Regt (Appointing Authority)
✓ Lt Col Thomas L Childs, 0134218, Hq 1262d ASU (Appointing Auth)
✓ Lt Col Raymond W Reisner, 051356, 36th Inf Regt (Appointing Auth)
✓ Capt Raymond C Bishop, 0403627, Hq 9th Inf Div TRIAL JA
(Appointing Authority)
✓ Capt Arthur H Colvin, 01285712, Sep Pt 1262d ASU ASST DEF COUNSEL
(Appointing Authority)
✓ 1st Lt Joseph L Bailey, 0452447, 365th Inf Regt ASST DEF COUNSEL
(Transferred)
✓ 2d Lt William L Striplin, 01062082, Hq 9th Inf Div ASST DEF COUNSEL
(Appointing Authority)

The court proceeded to the trial of Pvt. Alfred A. Cunci,
(Grade) (Name)

42 259 907 Detachment #3, 1262d ASU.

(Army serial number)

(Organization)

who, on appearing before the court, was asked by the trial judge advocate whom he desired to introduce as counsel.

[48a]

The accused stated he desired to be defended by the regularly appointed defense counsel. Accused further stated that he did not object to continuing with trial in the absence of the other defense counsels.
~~Vincent D. McNally~~ was sworn as reporter.

PROSECUTION TO ACCUSED: Do you want a copy of the record of your trial?

~~XXXXXX~~ Defense: The accused does.

The trial judge advocate then announced the names of the members of the court present and absent.

The trial judge advocate then announced the names of the accuser, the investigating officer, officers who forwarded the charges and any members of the court who would be called as witnesses for the prosecution as follows: The general nature of the charges in this case is one specification of violation of the 58th Article of War. Charges were preferred by Captain William Porter, CO, Detachment #8, 1288d ASU and were investigated by Lt. Col. C. T. Brown. No member of the court will be called as a witness for the prosecution and the records in this case disclose no grounds for challenge.

PROSECUTION: If any member of the court is aware of any facts which he believes to be a ground of challenge by either side against any member, it is requested he state such facts.

PRESIDENT: Apparently there are none.

PROSECUTION: The prosecution has no challenges.

PROSECUTION TO ACCUSED: You now have the right to challenge any member or members of the court for cause, and any one member, other than the law member, peremptorily.

DEFENSE: The accused has no challenges either peremptorily or for cause.

The accused was then asked if he objected to any other member present, to which he replied in the negative.

The members of the court and the personnel of the prosecution were then SEATED.

ARRAIGNMENT

The accused was then arraigned upon the following charges and specifications:

CHARGE : Violation of the 58th Article of War.

SPECIFICATION : In that, Private Alfred A. Curci, Detachment
#3, 1262 Area Service Unit, Fort Dix, New Jersey, then of Company
E, 48a Training Battalion, Basic Training Group, Army Ground Forces,
Replacement Training Center, Fort Dix, New Jersey, did at Fort Dix,
New Jersey on or about 24 December 1946 desert the service of the
United States and did remain absent in desertion until he surrendered
himself at Fort Dix, New Jersey on or about 14 October 1947.

[50a]

4 /

(Grade, organization, or arm of service)

AFFIDAVIT

and has investigated the matters set forth in specifications (Indicate by specification and three numbers)

in fact, to the best of his knowledge and belief.

+ / JAMES T. CREEGAN

1st IND.

By command of MAJOR GENERAL BACLES
(Grade and name of commanding officer)

Boxxxxxxxxxxxxx.....:

14-26796-1

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Raymond C. Bishop on 8 February 1947. Private Curci, how do you plead to the charge and specification? Before receiving pleas to the general issue, however, I advise you that special pleas or motions, if any, should be made at this time.

DEFENSE: There are no special pleas or motions. The accused pleads:

To the specification of the Charge: Not Guilty.
To the Charge: Not Guilty.

PROSECUTION: Does the defense or the court desire any readings from legal authorities?

PRESIDENT: The court does not.

DEFENSE: The defense does not.

PROSECUTION: Prosecution in an opening statement desires to state that it will show by the morning report the absence as alleged will show by the morning report the return to military control as alleged.

The prosecution offers into evidence extract copy of the morning report of Company E 43 Training Battalion, Fort Dix, New Jersey, and requests that it be marked Prosecution's Exhibit No. 1.

LAW MEMBER: It would appear from this morning report extract that the extract is in error. It reports to be an extract of the morning report of the 28th of December 1947 dropping the accused to absent without leave as of the 24th of December 1943.

PROSECUTION: Apparently it is in error sir. I don't know off hand. May it please the Court, may I have just a minute's recess while I discuss this?

PRESIDENT: The court will take a five minute recess.

The court then took a recess until 11:00 o'clock A.M., at which hour the personnel of the court, prosecution and defense, and the accused and the reporter resumed their seats.

PRESIDENT: The court will come to order.

PROSECUTION: May it please the Court, it is hereby stipulated by and between the prosecution, the defense and the accused, Private Alfred A. Curci, that the accused went absent without leave from Company E, 43rd Training Battalion, Ground Force Replacement Center, Fort Dix, New Jersey on or about 24 December 1946.

LAW MEMBER: Private Curci, do you understand what the trial judge advocate just said?

The accused: Yes sir.

LAW MEMBER: You understand you need not agree to this statement and that if you do not, it will be necessary for him to make his proof by other means?

Accused: Yes, sir.

Law Member: The stipulation will be received in evidence.

Prosecution: The prosecution offers into evidence extract copy of the morning report of Detachment #8, 8021st ABN, Fort Dix, New Jersey, and request that it be marked Prosecution's Exhibit No. 1.

Law Member: The document will be received in evidence and marked Prosecution's Exhibit No. 1.

(The reporter then marked the document Prosecution's Exhibit No. 1.)

(The Prosecution then read Prosecution's Exhibit No. 1 to the Court)

The prosecution rests.

Defense: Will the law member please explain to the accused his rights as a witness?

Law Member: Private Curci, as the accused in this case you have the right to do one of three things:

First, you may be sworn and take the stand as a witness. If you do that, whatever you say will be considered and weighed as evidence by the court just like the testimony of other witnesses, and you can be cross examined on your testimony by the trial judge advocate and the court.

Second, If you do not want to testify under oath you may, without being sworn, say anything you desire to the court as an unsworn statement, denying, explaining, or excusing any of the acts charged against you here. This statement can be oral or written, and can be made either by yourself, by your counsel, or by both of you. Since such a statement is not given under oath, and since you cannot be cross-examined upon it, it cannot be given the same weight by the court as sworn testimony, but it will be considered by the court and given such weight as it may seem to deserve. However, any admission or confession which you may make in your unsworn statement can be considered by the court as evidence against you. Furthermore, even though you may be sworn as a witness you may also, if you wish, afterwards make a statement of this kind, not under oath.

Third, you may remain silent, that is, say nothing at all. You have a perfect right to do this if you wish, and if you do so the fact that you do not take the witness stand yourself, or make any statement, will not count against you in any way with the court. It will not be considered as any admission that you are guilty, nor can it be commented on in any way by the trial judge advocate in addressing the court.

[53a]

Knowing these various rights, take time to consult with your counsel and then state to the court which you will do.

Defense: If it please the Court, the accused desires to be sworn as a witness.

Law Member: Very well.

Private Alfred A. Curci, the accused, was sworn and testified as follows:

BY THE PROSECUTION:

Q. State your name and grade.

A. Private Alfred Curci.

Q. Your organization and station.

A. Detachment #8, 1282d ASU.

Q. Fort Dix, New Jersey?

A. Fort Dix, New Jersey.

Q. Are you the accused in this case?

A. Yes sir.

Q. Are you in the military service of the United States?

A. Yes sir.

DIRECT EXAMINATION:

Q. Private Curci, you are 22 years old?

A. Yes sir.

Law Member: I'd like to ask counsel for the defense not to lead the witness; He can very easily elicit this information without leading questions.

Defense: Yes, I will withdraw the question and ask the answer be stricken.

Q. Private Curci, how old are you?

A. 23, sir.

Q. Are you married or single?

A. Single.

8 [54a]

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Q. When did you come in the military service?

A. October 25, 1945, sir.

Q. By enlistment or by induction?

A. By induction.

Q. Have you ever served overseas?

A. No sir.

Q. What does your family consist of?

A. I have a mother and six sisters, and I have no brothers, sir.

Q. What were you doing at the time of induction in the Army?

A. I was working to support my family, sir.

Q. How much education have you had?

A. Second term in high school, sir.

Q. Now, getting back to this period of absence of December 1946 to October 1947, was that absence terminated by your surrender to the military authorities?

A. Yes sir.

Q. At what place?

A. At Fort Dix, New Jersey, sir.

Q. What explanation do you have to give to the Court for your absence from December of 1946 to October 1947?

A. Well, sir, ever since I came in the service, I have been pretty sick. I go to sick call quite often because of a bad testicle I have, and when I did go to sick call they told me I would have to have an operation performed on the right testicle. Upon hearing this, I got very nervous and I started to worry as soon as I heard this, and I kept going back to sick call asking the captain there if there was any other way I could have this

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taken care of without an operation and the captain told me that was the only way I could feel better if I had this operation performed, and I was told that if I did not get the operation, that I would be court-martialed. Upon hearing this and being very frightened about getting this operation and having them cut open my testicle and operate on me, I went AWOL, sir.

Q. Well, now while you were home, Private Surci, did your physical condition improve or remain the same or did it get worse or what happened during that period of time?

A. Well, sir, my condition remained the same while I was home AWOL.

Q. And you had no operation or no medical attention for it while you were home?

A. No sir.

Q. Prior to coming into the Army, were you or were you not contributing to the support of your mother?

A. I was, sir.

Q. Did any other member of your family contribute to her support?

A. Yes sir.

Q. Who?

A. My sisters, sir.

Q. While in the Army, did you contribute to her support?

A. Yes, sir.

Q. Now, when you went home - when you left the post without permission in December of 46 and went home, what can you tell the Court as to the physical condition of your mother?

A. Well, sir, my mother is suffering from hypertensive heart trouble, and the doctor said that any shock that she would get or any nervous tension, more than she has now, that she

might suffer a cerebral hemorrhage of the brain and die.

Q. Private Curci, what explanation did you make to your mother for your presence home during this period?

A. Sir, I told her I had a three-day pass or had a seven day furlough.

Q. Well, as the time went on, or when the seven days or three day period expired, did you ever apprise your mother of the fact that you were absent without leave from the Army?

A. Yes, sir.

Q. Did you tell her why you were absent without leave from the Army?

A. Yes, sir.

Q. Now, since your return, voluntarily to military control, Private Curci, what if anything has happened with respect to the physical condition which you enumerated as being the reason for your leaving the service?

A. I have been operated since that time, sir.

Q. Where?

A. At Tilton General Hospital, Fort Dix, New Jersey, sir.

Q. How long after you returned to Fort Dix, did the operation take place?

A. About 10 days, sir.

Q. What effect has this operation had upon your physical condition so far as the place you were operated on is concerned?

A. Well, sir, ^{and} discharged me as being well, operation being a success.

Q. Well, you know how you feel. I want you to tell the Court, so far as you are concerned, what beneficial effect, if any, this operation had as far as you are concerned?

- A. Well, sir, I still get continuous pains on my abdomen and both testicles and back and left leg.
- Q. How long has this condition existed, Private Curci?
- A. Well, I had this trouble before i was inducted in the Army, sir.
- Q. You had it before you came in the Army?
- A. Yes sir.
- Q. Had you been treated for this condition by any family physician or civilian doctor before you came in the service?
- A. No sir.
- Q. Did you bring this condition to the attention of the medical expert at the time you were examined when you were inducted?
- A. Yes sir.
- Q. That is a civilian doctor or Army doctor who examined you at the time of induction?
- A. I believe it was an Army Doctor, sir.
- Q. Private Curci, this is approximately almost 10 months absence here now, was it the fear of the operation or the consequences that you would suffer if you failed to consent to an operation by the military that was the primary cause of your remaining absent from the service over that period?
- A. Yes sir.
- Q. The condition of your mother or conditions at home were of secondary effect or cause?
- A. Yes.
- Q. I want you to tell the Court, if at any time, during this 10 month period you intended to desert the service of the United States Army.
- A. No sir.

Q. Well, you stayed away 10 months. Now you tell the Court if this condition prevailed over the entire period of your absence?

A. Yes, sir, it did.

Q. What prompted you to come back when you did?

A. Well, sir, my mother kept telling me that I had better go back and take my punishment, and she says: "You didn't do anything real wrong. It was just that you were very frightened of this operation that was to be performed, and that is the reason that you went AWOL." Just before I returned voluntarily to Fort Dix, New Jersey, my mother suffered one of her strokes because of my getting into trouble in the Army, and when that happened, I said, well I figure it is best to go back to Fort Dix, and face the punishment, because I know for a fact that every day I was AWOL, the farthest thing from my mind was desertion, and I never had that thought in my mind any day I was home.

Q. And you say then it was the influence of your mother upon you that finally made up your mind you would come on back to the military service and get this whole situation over with.

A. Yes sir.

Q. Did that include also, the question of the medical attention needed by you?

A. Yes sir.

Q. Including an operation if necessary?

A. Yes sir.

Defense: I have not further questions.

CROSS EXAMINATION:

Q. Private Curci, on what date did you return to Fort Dix, New Jersey.

A. October 25, 19 - October 14, 1947.

Q. Stated you left because you were afraid of this operation?

A. Yes sir.

Q. How long did you intend to stay away when you left?

A. Well, sir, I intended to come back as soon as this fear left me.

Q. And it was for a rather indefinite time you intended to stay, is that right? You did not know exactly when you would come back.

A. No sir. I didn't think that this fear would last in my body that long.

Q. Did you realize when you left, that when you did return, you would still have to face the operation?

A. Well, sir, that was one of the main factors on my mind. If I didn't have the operation, I would get this court-martial, and I was very much worried by the success of the operation, and just what it would do to me.

Q. Did you work while you were home?

A. No sir.

Q. Did you contribute to the support of your family in any way while you were home?

A. Yes sir.

Q. In what way?

A. Well, sir for one thing I comforted my mother by being near her, and the fact that my father died in 1945, mother and father were very much attached, and when he died, she became very, very ill, and just having me near her, with her made her very comfortable and helpful. I was with her and I also

helped around the house the best I could, kept the house repaired and do odds and ends around the house.

Q. You had the operation then on your return to Fort Dix, N. J.

A. Yes sir.

Q. Did the same fear still persist at the time you had the operation?

A. Yes sir.

BY THE COURT:

Q. Private Curci, did you absent yourself without leave on the 24th of December 1946?

A. Yes sir.

Q. Is that the correct date, do you remember?

A. Yes sir.

Q. Do you remember when you went absent without leave?

A. Yes sir.

Q. What was the date?

A. 24th of December 1946.

Q. And what organization were you assigned to at that time?

A. I don't remember, sir. I don't remember the organization.

Q. You don't remember the organization you were assigned to? How long had you been assigned to the organization you were with at the time you went absent, a few days, a few months?

A. I am not sure. I think a few months.

Q. Where did you serve before you came to Fort Dix?

A. Sir, when I was inducted, I was sent to Fort Hancock for six days, and I came to Fort Dix, and have been here ever since.

Q. Were you in the status of trainee when you went absent?

A. I don't know if I was, sir.

Q. Well, you were, according to the testimony, in the Army for a year and three months at the time you went absent on the 24th of December 1946, were you not?

A. Yes sir.

Q. That means you were in the Army for over a year.

A. I think that was it, sir.

Q. Did you serve all that year, with the exception of this six days you said you were at Fort Hancock, serving all of the rest of that year in the same organization?

A. I don't think so, no sir.

Q. I understand by your testimony that you went AWOL because you did not want to be subject to punishment under Army Regulations, that is to be tried in court-martial if you refused needed medical treatment, is that right?

A. That is one of them, sir.

Q. And I also understand your mother's influence was the reason why you came back. In other words, that is why you made up your mind to return, because of your mother's influence.

A. Well, that is one of the influences, sir.

Q. Who also helped you overcome this dread that you had, is that right?

A. Well, sir, I still had fear of the operation.

Q. What was the reason you came back; you still had this fear?

A. Sir, one thing, my mother was getting very ill like that, and possibly getting a very bad stroke which would kill her for one reason, and the second reason, I figured it was the best thing to do, go back to Fort Dix, N. J., and just face my punishment.

Q. Have you been back to the hospital for additional physical examination since your operation? If you still complain of pain, have you had that checked again? Have you recently been to the hospital complaining of pain you now have?

A. Yes sir.

Q. What were you told then?

A. Well, given a light duty slip, and I was told that the pain would go away shortly.

President: That is all. No further questions by the Court.
The witness is excused.

Defense: May it please the Court, the prosecution and counsel for the accused have entered into a stipulation that if Arthur M. Persky, M.D., 1750 Ocean Parkway, Brooklyn 23, N. Y., were produced as a witness on behalf of the accused, he would testify that Mrs. Carmela Curci has been under his care for hypertensive heart trouble.

Prosecution: The prosecution so stipulates.

Law Member: Stipulation may be received in evidence.

Defense: A second stipulation entered by and between the prosecution and counsel for the accused that if, one, Anna Graziano of 6706-14th Avenue, Brooklyn, were present, she would testify that she has known Carmela Curci, mother of the accused for the past 20 years. That since the death of her husband, has found it hard to get along and is now in need of her son.

Prosecution: Prosecution so stipulates.

Law Member: Stipulation may be received in evidence.

Defense: Third stipulation is that if, one, Rev. John J. Fleming of St. Athanasius Rectory, 2154-81st Street, Brooklyn,

4, New York, were produced as a witness on behalf of the accused, he would testify that the nervous disposition has been considerably aggravated by the death of his father not so long ago.

Prosecution: Prosecution so stipulates.

Law Member: The stipulation will be received in evidence.

Prosecution: The prosecution has nothing further. Does the court wish to have any witnesses called or recalled?

President: The Court does not.

Prosecution: Prosecution waives opening argument.

(The defense then made an argument on behalf of the accused)

Prosecution: The prosecution makes no argument.

President: Has the prosecution anything further to offer?

Prosecution: Nothing further.

President: Has the defense anything further to offer?

Defense: Defense has nothing further.

President: Court will be closed.

FINDINGS

Neither the prosecution nor the defense having anything further to offer, the court was closed and voted in the manner prescribed in Articles of War 31 and 43. Upon secret written ballot, two-thirds of the members present at the time the vote was taken concurring in each finding of guilty, the court finds the accused:

Of the Specification of the Charge: Guilty.
Of the Charge : Guilty.

PREVIOUS CONVICTIONS, ETC.

The court was opened and the trial judge advocate stated, in the presence of the accused and his counsel, that he had no evidence of previous convictions, ~~which~~
(No or some)

(Cross out if inappropriate)

The trial judge advocate read the data as to age, pay, service, and data as to restraint of accused as shown on the charge sheet as follows:

Present

Present
Age 22 6/12 Pay, \$75.00

Class: "F" Deduction (on pay plus pay for length of service)
dependents, \$ 22.00 per month.

Government insurance deduction, \$ 6.50 per month.

Data as to service: No prior service. Inducted 25 October 1945, AFIS,
New York.

Data as to restraint of accused: Confined 22 January 1948, Post Stokizade.
Fort Dix, New Jersey.

Prosecution to accused: Is that data correct?

~~Answered~~ Defense: It is.

SENTENCE

The court was closed, and upon secret written ballot two-thirds of the members present at the time the vote was taken concurring, sentences the accused to be dishonorably discharged the service, to forfeit all pay and allowances due or to become due and to be confined at hard labor at such place as the reviewing authority may direct for one and one-half (1½) years.

The court was opened and the president announced the findings and sentence.

The court then, at 11:30 o'clock, A. M., 19 February, 1948 proceeded to hear other cases.

AUTHENTICATION OF RECORD

Willard B. Carlock
WILLARD B CARLOCK
Col., 364th Inf Regt
President.

Ray A. McKinsey
RAY A. MCKINSEY
1st Lt., Hq 1262d ASG
Trial Judge Advocate.

I examined the record before it was authenticated.

Dan O'Neil
DAN O'NEIL
Capt, Hq 9th Inf Div
Defense Council.

HEADQUARTERS, 9TH INFANTRY DIVISION

Fort Dix, New Jersey
25 March 1948

In the foregoing case of Private Alfred A. Curci, 42 259 907, Detachment #3, 1262d Area Service Unit, only so much of the finding of guilty of the Specification and the Charge as involves a finding of guilty of absence without leave from 24 December 1946 to 14 October 1947 in violation of Article of War 81 is approved. Only so much of the sentence as provides for dishonorable discharge the service, forfeiture of all pay and allowances due or to become due and confinement at hard labor for six months is approved and will be duly executed but the execution of that portion thereof adjudging dishonorable discharge is suspended until soldier's release from confinement. The Post Stockade, Fort Dix, New Jersey, or elsewhere as the Secretary of the Army may direct, is designated as the place of confinement.

Arthur A. White
ARTHUR A. WHITE
Major General, USA
Commanding

[67a]

EXTRACT COPY OF MORNING REPORT		
LAST NAME—FIRST NAME—MIDDLE INITIAL Curci Alfred A		GRADE Pvt
ARMY SERIAL NO. PA 42 259 907		
COMPANY Det #3 1262 ASU	REGIMENT Ft Dix NJ	ARM OR SERVICE MO
EXTRACT COPY OF MORNING REPORT OF		
COMPANY, TROOP, BATTERY, OR DETACHMENT Det #3 1262 ASU	REGIMENT OR OTHER ORGANIZATION Ft Dix NJ	
20 October 47 Curci Alfred A RA42259907 Pvt Race W date of birth May 25 Term of Enl 2yrs Enl 25 Oct 45 Phy Status 1 O/S none Br Unasgd Asgd & Jd claiming AWOL Co E 38th Bn RFC Ft Dix NJ (Inac) per par 4 RM 69 Hq 5th Inf Div Ft Dix NJ EDCLR 14 Oct 47 /s/ James T Coleman Capt Inf		
COMPLETE DESIGNATION OF COMMAND Det #3 1262 ASU		STATION Ft Dix NJ
		DATE 28 Oct 47
I CERTIFY THAT I AM THE ☒ COMMANDING OFFICER ☐ PERSONNEL OFFICER OF THE ABOVE DESIGNATED COMMAND AND OFFICIAL CUSTODIAN OF THE MORNING REPORTS OF SAID COMMAND, AND THAT THE FOREGOING IS A TRUE AND COMPLETE COPY (INCLUDING ANY SIGNATURE OR INITIALS APPEARING THEREON) OF THAT PART OF THE MORNING REPORT OF SAID COMMAND SUBMITTED AT Fort Dix New Jersey FOR THE DATES INDICATED IN SAID COPY WHICH RELATES TO THE PERSON REFERRED TO IN EXTRACT COPY.		
TYPED NAME, GRADE, ARM OR SERVICE JAMES T. COLEMAN CAPT. INF.		SIGNATURE <i>[Signature]</i>
100 FORM 44 EDITION OF 1 MAY 45 MAY BE USED. 10-44007-2 U. S. GOVERNMENT PRINTING OFFICE		

Prosecution's Exhibit #1

306831

[68a]

Vincent D. McNally
Vincent D. McNally



DEPARTMENT OF THE ARMY
UNITED STATES ARMY JUDICIARY
NASSIF BUILDING
FALLS CHURCH, VIRGINIA 22041

REPLY TO
ATTENTION OF:

JAAJ-ED (GCM 1975/3245)
(CM 329696)

22 July 1975

Frederic A. Johnson, Esquire
258 Broadway
New York, NY 10007

Dear Mr. Johnson:

This is in reference to the application of relief submitted by Alfred A. Curci, formerly a member of the Army of the United States, ASN: 42 259 907, concerning his general court-martial at Fort Dix, New Jersey, on 19 February 1948.

I have been requested by The Judge Advocate General of the Army to inform you of the results of the application for relief under Article 69, Uniform Code of Military Justice, by Mr. Curci. Following examination and consideration of the request for relief, the original record of trial, and other matters presented, including your brief, it has been determined that a sufficient basis for relief under any of the four grounds set forth in Article 69 has not been established. Accordingly, the application for relief was denied on 18 July 1975 by Major General Lawrence H. Williams, the then the Acting The Judge Advocate General. Inclosed is a copy of our denial letter to Mr. Curci.

Your main contention -- inadequacy of representation -- was analyzed and reviewed carefully. It was concluded, however, that the representation by the non-lawyer defense counsel was not prejudicially inadequate. More than likely his agreement to stipulate the period of "AWOL" was based on the theory that an admissible morning report entry was obtainable by the prosecution. It is noted, of course, that the accused's trial testimony and the lack of the prosecution's evidence as to required intent caused the approval of only the lesser included offense of "AWOL."

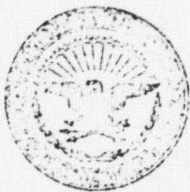
I trust that this information will be of assistance to you.

Sincerely yours,

ABRAHAM NEMROW
Chief, Examination and New Trials
Division

1 Incl
as stated

[69a]



DEPARTMENT OF THE ARMY
UNITED STATES ARMY JUDICIARY
NASSIF BUILDING
FALLS CHURCH, VIRGINIA 22041

REPLY TO
ATTENTION OF: JAAJ-ED

22 July 1975

Mr. Alfred A. Curci
087-18-4993
1571 46th Street
Brooklyn, NY 11219

REFERENCE NUMBER:

JAAJ-ED GCM 1975/3245
(CM 329696)
DATE SENTENCE ADJUDGED:
19 February 1948

Dear Mr. Curci:

I have been requested by The Judge Advocate General to inform you of the results of your request for relief with respect to your conviction by court-martial, the results of which were promulgated in:

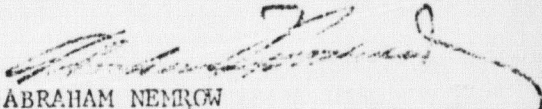
General Court Martial Order Number 52, Headquarters, 9th Infantry Division, Fort Dix, New Jersey, dated 25 March 1948.

Following examination and consideration of your request, the record of trial, and such matters as presented by you, it has been determined that a sufficient basis for relief under any of the four grounds set forth in Article 69 of the Uniform Code of Military Justice has not been established. Your copy of the record of trial, submitted with your application, is returned herewith.

Accordingly, your application for relief was denied on 18 July 1975.

Sincerely yours,

1 Incl
as


ABRAHAM NEMROW
Chief, Examination and New Trials
Division

JAAJ-FL-10
24 Sep 74 (Rev.)

[70a]